

DEC 9 2015

U.S. DISTRICT COURT  
W. DIST. OF N.C.

DISTRICT COURT OF THE UNITED STATES  
for the  
Western District of North Carolina, a several state

United States of America )

V. )

Curtis Edwin Leyshon )  
Accused )

case no. 4836267

\*\*\*\*\*

Motion to be Informed of Nature of the Charge

COMES NOW, Curtis Edwin Leyshon (hereafter I, me, my), a born again child of God, called to preach the Truth of my Lord and Savior Jesus Christ. My home is Heaven. I am unrepresented and come as myself. I am an American Citizen, Natural Born Native and Citizen domiciled in the territorial boundaries of North Carolina, one of the several states guaranteed a republican form of government. And further, my status has been set forth by certified record recorded in the Watauga County Register of Deeds office and placed in the record of this court. I accept no other status and any attempt to apply any other status is fraud.

All my rights come from God. I have no statutory rights or constitutional rights. The Constitution of the United States guarantees that all officials of the federal government will not violate my God given rights without strictly adhering to due process of law. All the officers of government who participate in this matter have sworn to GOD to uphold my God given rights. Numbers 30:2 says your oath

is bound to your soul. Anyone involved that does not perform there oath/duty is a liar and shall find the wrath of GOD on their soul when they give an account for these actions.

### History of the Case

I was issued a United States District Court Violation Notice on June 5, 2015.

At my initial hearing the judge was clear at the 34:00 mark of the recording that he was not familiar with the Administrative Procedures Act and section 553 of title 5 USC.

At the 37:35 mark of the recording the judge refused the DOJ offer to fully brief this matter and he then explains the court's subject matter jurisdiction.

He stated the "code of federal regulations have been enacted by congress". That is wrong at best. These regulations were written via informal rule making by the administrative agency and published in the federal register as a proposed rule, hearings are held, and after any issues have been responded to they are published as a final rule in the federal register at which point the congress has 6 months to do away with the rule. This is accomplished by adherence to the Administrative Procedures Act, specifically 5 USC § 553(b),(c), and (d). Administrative rules are not Laws of the United States.

Regulation are either procedural, administrative, or substantive. The only regulations that can affect my rights are substantive regulations having force and effect of law according to Chrysler Corp. v. Brown, 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979).

The only federal registry citations for 36 CFR § 4.21 are 52 FR 10683 and 80 FR 36476. Both fail miserably to be a substantive rule so it can have no force and effect of law.

The judge then went on to say "I'm a judge that has been assigned to handle these matters that include speeding cases that are charged under the code of federal regulations." The absolute prohibition of administrative action by a bona fide Article III Court of United States within the several States is clearly held in *Postum Cereal Co. Inc. v. California Fig Nut Co.*, 272 U.S. 693, 700-701 (1926), to wit:

The distinction between the jurisdiction of this court which is confined to the hearing and decision of cases in the **constitutional sense and that of administrative action and decision, power for which may be conferred upon courts of the District is shown in the case of *Keller v. Potomac Electric Company*, 261 U. S. 428, 440, 442, 443, (1923).** There it is pointed out that, while Congress in its constitutional exercise of exclusive legislation over the District may clothe the courts of the District, not only with the jurisdiction and powers of the federal courts in the several states, but also with such authority as a state might confer on her courts (*Prentiss v. Atlantic Coast Line Company*, 211 U. S. 210, 225, 226, (1908)), and **so may vest courts of the District with administrative or legislative functions which are not properly judicial, it may not do so with this court, or any federal court established under article 3 of the Constitution.** Of the jurisdiction of this court, we said, at page 444 of 261 U. S. (43 S. Ct. 449):

**'Such legislative or administrative jurisdiction, it is well settled, cannot be conferred on this court either directly or by appeal.** The latest and fullest authority upon this point is to be found in the opinion of Mr. Justice Day, speaking for the court in *Muskrat v. United States*, 219 U. S. 346 (1902). The principle there recognized and enforced on reason and authority is that the jurisdiction of this court and of the inferior courts of the United States ordained and established by Congress under and by virtue of the third article of the Constitution is limited to cases and controversies in such form that the judicial power is capable of acting on them, and does not extend to an issue of constitutional law framed by Congress for the purpose of invoking the advice of this court **without real parties or a real case,**

or to administrative or legislative issues or controversies.

At the 39:11 mark of the recording he again reiterates the subject matter jurisdiction is "the code of federal regulations that have been enacted by congress." Wrong again.

At the 39:20 mark of the recording the judge stated "I'm not going to let you ask me questions Mr. Leyshon" depriving me of any opportunity to be informed of nature and cause of the proceedings and the charge in spite of numerous request by me.

At the 39:46 mark of the recording I informed the judge that I had a public record of my status to enter into the record and he refused to accept the document, depriving me of the opportunity to enter evidence. It has been entered at the Clerk of Court's office.

At the 41:45 mark of the recording the judge stated "Sir, that's what the violation notice is. It advises you of what your charged with. It gives you the CFR number. It describes the offence."

So the facts from the recording of the initial hearing are:

1. The judge declared the subject matter jurisdiction of this "offence" is attributed to the code of federal regulation shown on the violation notice to be 36 CFR § 4.21.
2. The judge refused me the opportunity to ask questions and refused to answer.
3. The judge refused to issue subpoenas for me.
4. The judge refused to accept sworn information contained in a certified public record.

5. The court was informed that 36 CFT § 4.21 was not a substantive rule having force and effect of law as held in *Chrysler v. Brown*, supra.

At the next hearing the recording that was supplied to me was not audible when the judge spoke leaving me with no record of the proceeding. I was not informed of the requirements of the law.

The one thing the recording acknowledged was when the DOJ lawyer admitted that the initial appearance was incomplete.

**Federal Rules of Criminal Procedure, Rule 58**

Rule 58. Petty Offenses and Other Misdemeanors mandates the following procedure to inform me of these minimum requirements that I may have a fair trial, to wit:

**(a) Scope.**

**(1) In General.** These rules apply in petty offense and other misdemeanor cases and on appeal to a district judge in a case tried by a magistrate judge, unless this rule provides otherwise.

.....

**(b) Pretrial Procedure.**

.....

**(2) Initial Appearance.** At the defendant's initial appearance on a petty offense or other misdemeanor charge, the magistrate judge must inform the defendant of the following:

**(A) the charge, and the minimum and maximum penalties, including imprisonment, fines, any special assessment under 18 U.S.C. § 3013, and restitution under 18 U.S.C. § 3556;**

**(B) the right to retain counsel;**

.....

**(D) the defendant's right not to make a statement, and that any statement made may be used against the defendant;**

.....

**(3) Arraignment.**

**(A) Plea Before a Magistrate Judge.** A magistrate judge may take the defendant's plea in a petty offense case. In every other misdemeanor case, a magistrate judge may take the plea only if the defendant consents either in writing or on the record to be tried before a magistrate judge and specifically

waives trial before a district judge. The defendant may plead not guilty, guilty, or (with the consent of the magistrate judge) nolo contendere.

.....  
**(c) Additional Procedures in Certain Petty Offense Cases. The following procedures also apply in a case involving a petty offense for which no sentence of imprisonment will be imposed:**

**(1) Guilty or Nolo Contendere Plea. The court must not accept a guilty or nolo contendere plea unless satisfied that the defendant understands the nature of the charge and the maximum possible penalty.**

.....  
**(e) Recording the Proceedings. The court must record any proceedings under this rule by using a court reporter or a suitable recording device.**

.....

### **Motion to be informed Per Rule 58**

1. **the charge:** Rule 11 requires the court to inform the accused of the nature of the charge. The word nature means every essential element of a thing.

a. Does the charge require me be driving?

b. Does the charge require me be using a motor vehicle?

What definition of motor vehicle does this court rely on?

c. Does the charge require me be operating a motor vehicle on the public right of way?

2. **the minimum and maximum penalties:** What are the permissive penalties for this charge?

3. **the defendant's right not to make a statement, and that any statement made may be used against the defendant;** Please inform me of this requirement.

4. Is this court acting in this case inquisitorial or adversarial?
5. Does this court take Judicial Notice of the Laws of the United States (Statutes of the United States)?
6. Does this court take Judicial Notice of the Constitution of the United States?
7. Does this court take judicial notice of my God given right to life, liberty, and property that cannot be infringed but by the terms of the Constitution of the United States?
8. (a) Does this court take judicial notice of my certified status that has been entered on the record?  
  
    (b) If no what status does this court claim for me by what authority and evidence?
9. Does this court take judicial notice of the definition of motor vehicle in the criminal code at 18 USC § 31?
10. Is this an article III court?
11. According to the standing doctrine there must be an injured party. Who is the

injured party?

12. Does this court take judicial notice that 36 CFR § 4.21 is not a substantive regulation having force and effect of law?

13. Does this court take judicial notice that an administrative rule cannot be heard in an article III court?

14. What is the subject matter jurisdiction on the record?

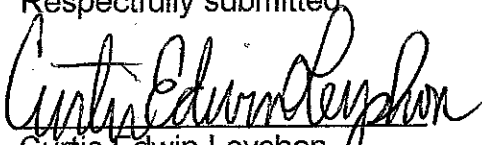
15. In American Clipper v. Howerton, 311 NC 151, the court held:

" The question as the parties have put it is whether Clipper has a "right to ownership, title, possession or a security interest" with respect to said vehicle superior to that of either Howerton or Finance."

These are the rights associated with my truck. A truck I bought with no known strings attached has been robbed of ownership and possibly security interest from me through fraud and deceit. Who claims ownership of my property?

Dated: 9/12/15

Respectfully submitted:

  
Curtis Edwin Leyshon



Certificate of service

I, Curtis E. Leyshon, do certify that a copy of the foregoing **Motion to be Informed** was served to the USDOJ attorney by hand delivery in open court

on this, the 9<sup>th</sup> day of December, 2015

Curtis E. Leyshon  
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